

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RANDALL L. SPADE,	:	
	:	
Plaintiff	:	
V.	:	Civil No.: 4:15-CV-02513
	:	
THE UNITED STATES OF	:	
AMERICA,	:	(JUDGE BRANN)
Defendant	:	

**THE UNITED STATES' MOTION TO DISMISS PURSUANT TO  
RULE 12(B)(1) FOR LACK OF SUBJECT MATTER JURISDICTION**

AND NOW, comes the United States of America,<sup>1</sup> by its attorneys, David J. Freed, United States Attorney for the Middle District of Pennsylvania, and Timothy S. Judge, Assistant U.S. Attorney, who hereby moves that the Court dismiss plaintiff's amended complaint pursuant to Fed. R. Civ. P. 12 (b) (1) of the Federal Rules of Civil Procedure.<sup>2</sup> The prior administrative determination by the Secretary of Labor that the Federal Employees Compensation Act covers Mr.

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<sup>1</sup> Pursuant to 28 U.S.C. § 2679(d)(1), the United States of America should be substituted for the United States Department of Justice.

<sup>2</sup> On June 18, 2020, the Court held a status conference with counsel for the parties. During the conference, the undersigned represented that the United States intended to file a motion for summary judgment asserted a lack of jurisdiction and intended to file materials beyond the pleadings. However, upon further research and review, the instant motion is more appropriately filed pursuant to Fed. R. Civ. P. 12(b)(1). *See Gotha v. United States*, 115 F.3d 176, 179 (3d Cir. 1997)(a court is not confined to the plaintiff's complaint but may consider affidavits, depositions, and testimony to resolve factual issues bearing on jurisdiction).

Spade's Federal Tort Claims Act claim against the United States, such that plaintiff's claim against the United States is jurisdictionally barred. *See* 5 U.S.C. § 8116(c) (providing that "the liability of the United States or an instrumentality thereof under this subchapter . . . with respect to the injury or death of an employee is exclusive and instead of all other liability of the United States or of the instrumentality to the employee . . . in an direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute"). A brief in support of this motion will be filed in accordance with M.D. Pa. Local Rule 7.5.<sup>3</sup>

Dated: July 2, 2020

Respectfully submitted,

DAVID J. FREED  
UNITED STATES ATTORNEY

/s/ Timothy S. Judge  
TIMOTHY S. JUDGE  
Assistant U.S. Attorney  
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<sup>3</sup> On June 22, 2020, the Court issued a scheduling order which was based on the United States' previous representations at the status conference. Pursuant to the Order, the United States' brief is due on or before July 16, 2020, Plaintiff's brief is due on or before August 6, 2020, and the United States' reply brief is due on or before August 20, 2020. The United States does not believe the instant motion should give the Court cause to change the previous order or the deadlines set forth therein.

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**CERTIFICATE OF SERVICE BY MAIL**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania, and is a person of such age and discretion as to be competent to serve papers.

That on July 2, 2020, she served copies of the attached:

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by CM/ECF notification:

Christian A. Lovecchio, Esquire  
Email: [contact@callahanlovecchiolaw.com](mailto:contact@callahanlovecchiolaw.com)

/s/ Christina Nihen  
CHRISTINA NIHEN  
Legal Assistant